1898, § 57 *e*. And since the mortgagee proved his whole claim, he would seem to have waived his lien. *Ex parte Downes*, 1 Rose 96. Under similar provisions of previous bankruptcy acts, however, a secured creditor who proved his claim in ignorance of the effect was allowed to withdraw the proof and rely on the security. *Ex parte Harwood*, Fed. Cas. No. 6, 185; *In re Baxter*, 12 Fed. 72. Such a privilege should be given to the mortgagee in the present case, as from his assertion of the lien it is clear that he meant to keep it. Yet the principal case is right in holding that if the dividends on the claim are retained, the security is lost. *In re Lantzenheimer*, 124 Fed. 716.

BANKRUPTCY — PROVABLE CLAIMS — RIGHT TO PROCEEDS OF CONVERTED STOCK. — A broker converted stock belonging to his customer. At the time of his bankruptcy, other stock of the same kind was found in his possession. *Held*, that the customer is entitled to the stock as against the bankrupt's general creditors. *In re Brown & Co.*, 171 Fed. 254 (Dist. Ct., S. D. N. Y.).

A broker need not keep a customer's stock separate from that belonging to other customers or to himself. *Richardson* v. *Shaw*, 209 U. S. 365. *Contra, Van Voorhis* v. *Rea Bro. Co.*, 153 Pa. St. 19. But a broker must keep a sufficient number of shares of each kind of stock to meet all his outstanding obligations in that stock; otherwise he is guilty of a conversion. Nor will a re-purchase of the same kind of stock after the conversion relieve him from liability. *Taussig* v. *Hart*, 58 N. Y. 425. In the principal case, the re-purchase of the stock, even with the intention of appropriating it to the original customer, could not give the latter a right to it, especially since bankruptcy intervened. The result in the principal case should have been reached only if the funds which were produced by the broker's conversion and which he held as constructive trustee for his customer were capable of being followed into the new shares; upon this latter theory, the customer would have been protected by his equitable right to the new *res*. *Langton* v. *Waite*, L. R. 6 Eq. 165, 173; *In re Halletts Estate*, L. R. 13 Ch. 696, 711.

BANKRUPTCY — RIGHTS AND DUTIES OF BANKRUPT — PUNISHMENT FOR CONTEMPT. — A bankrupt appeared, by a preponderance of evidence, to be wilfully disobeying an order of the referee requiring him to surrender certain assets alleged to be in his possession. The court, however, was not satisfied beyond a reasonable doubt of the truth of these facts. *Held*, that it will not adjudge the bankrupt in contempt. *In re J. H. & A. P. Mize*, 22 Am. B. R. 577 (Dist. Ct., N. D. Ala., July, 1909).

For a discussion of the principles involved, see 23 HARV. L. REV. 30.

BANKRUPTCY — WHO MAY BE A PETITIONING CREDITOR — SPLITTING CLAIMS. — A made a general assignment for the benefit of his creditors. B, who held three notes made by A, thereupon endorsed two of them to C and D respectively, in order to qualify them as petitioning creditors. B, C, and D joined in a petition to have A adjudicated a bankrupt. *Held*, that C and D are not competent petitioners. *Re Lewis F. Perry & Whitney Co.*, 172 Fed. 745 (Dist. Ct., D. Mass.). See NOTES, p. 296.

BILLS AND NOTES — CHECKS — PAYMENT OF STOLEN CHECK SIGNED IN BLANK. — The defendant signed a check in blank and locked it up. It was stolen, and the plaintiff bank, on which it was drawn, cashed it. *Held*, that the defendant is liable for the amount of the check. *Trust Co. of America* v. *Conklin*, 42 N. Y. L. J. 793 (N. Y. Sup. Ct., Nov., 1909).

When a note is made to bearer, but not delivered by the maker, it is generally held that the latter is not liable even to a *bonâ fide* purchaser. *Burson* v. *Huntington*, 21 Mich. 415. *Contra, Shipley* v. *Carroll*, 45 Ill. 285. This result is based on the doctrine that delivery is an essential requisite of a valid note. It may be, however, that the maker's gross negligence will estop him from denying delivery.

Ingham v. *Primrose*, 7 C. B. N. S. 82. As there is no privity between the maker and a subsequent holder, the maker is under no duty to such a holder to refrain from signing such an instrument. But the relation of debtor and creditor between the depositor and the bank imposes upon the depositor a duty of care to the bank. *Timbel* v. *Garfield Nat. Bank*, 121 N. Y. App. Div. 870. On the grounds of business convenience a bank should only be required to ascertain the genuineness of the depositor's signature before paying the check. As the Negotiable Instruments Law provides that if an incomplete note is not delivered, it will not bind the maker, the principal case must be supported on the theory that the depositor owes the bank a duty not to place his signature on a check unless he expects it to be paid if regularly presented. See N. Y. Laws of 1898, ch. 336, § 34.

Bills and Notes — Negotiability — Certainty in Amount: Attorney's Fees. — A promissory note contained an additional promise to pay counsel fees if collected by an attorney. *Held*, that the instrument is not negotiable. *American Machinery & Export Co.* v. *Druge Bros.*, 74 Atl. 84 (Vt.).

Two elementary requirements of a negotiable note are: (1) that it must contain a promise to pay a sum certain in money; and (2) that it must not contain an independent agreement to do anything else. *Smith* v. *Nightingale*, 2 Stark. 375; *Martin* v. *Chauntry*, 2 Str. 1271. Apart from the cases which hold a promise to pay attorney's fees invalid because usurious, notes like the one in the principal case have been attacked as violating both of these requirements. *Woods* v. *North*, 84 Pa. St. 407; *First Nat. Bank* v. *Larsen*, 60 Wis. 206. But it is generally held that a promise to pay a certain sum and the current rate of exchange is negotiable, though the amount to be paid is mathematically uncertain. *Hastings* v. *Thompson*, 54 Minn. 184. *Contra*, *Philadelphia Bank* v. *Newkirk*, 2 Miles (Pa.) 442. And a note is negotiable though it contains a provision that the holder shall have the option of demanding something else instead of payment in money. *Hosstatter* v. *Wilson*, 36 Barb. (N. Y.) 307. Similarly it would seem that a note containing a promise to pay attorney's fees should be negotiable. Until maturity the amount to be paid is certain, and the additional promise cannot possibly impair the note's commercial usefulness. *Sperry* v. *Horr*, 32 Ia. 184; *Farmers' Nat. Bank* v. *Sutton Mfg. Co.*, 52 Fed. 191. Such is the rule adopted in the Negotiable Instruments Law. See Brannan, Neg. Inst. L. p. 2, § 2.

Carriers — Custody and Control of Goods — When Railroad Becomes Warehouseman. — A traveling salesman left his trunk four days at the defendant's terminal depot which was also the initial depot for his next trip. The lower court charged that the jury might consider the defendant's habit of allowing this, as a silent consent to keep the goods as a common carrier, and might hold it liable for destruction of the goods by fire without negligence. *Held*, that the instruction is correct. *McCoy* v. *Atlantic Coast Line*, 65 S. E. 939 (S. C.).

In South Carolina, strict carrier's liability begins when baggage is delivered within a reasonable time before transportation is to commence, although not yet checked, and after the arrival of the goods at their destination, seems to last until a reasonable time for their removal. *Fleischmann* v. *R. R.*, 76 S. C. 237. See *Murphy* v. *Ry.*, 77 S. C. 76. Notice of arrival would probably not then be required. See *Spears* v. *R. R.*, 11 S. C. 158. The custom of keeping the trunks might possibly bear on the reasonableness of the time since the last trip or before the next. But with only the facts reported, it is difficult to see how the railroad's failure, on former occasions, to object to keeping the trunks more than a reasonable time, can be construed as a consent to be responsible as common carrier rather than as warehouseman or gratuitous bailee.

Choses in Action — Manner and Effect of Assignment — Partial Assignment of Debt. — A assigned to her attorney B, such portion of a debt